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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

NO. 84-967

MORGAN GUARANTY INTERNATIONAL BANK,
MORGAN GUARANTY TRUST
COMPANY OF NEW YORK,
Petitioners,

v.

CITY OF HOUSTON,
HOUSTON INDEPENDENT SCHOOL DISTRICT
AND WILLIAM R. BROWN, JR.,
Respondents.

BRIEF OPPOSING THE PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FIRST SUPREME JUDICIAL DISTRICT AT HOUSTON, TEXAS

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I

RESPONDENTS' RESTATEMENT OF THE QUESTION PRESENTED FOR REVIEW

May a state, or its subdivisions, levy an apportioned tax on the shares of an Edge Act Corporation operating a branch bank within said state, when neither the designated home office nor the shareholders reside within said state?

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The City of Houston, the Houston Independent School District and William R. Brown, Jr., Respondents herein, respectfully submit this brief in opposition to Petitioners' application for a Writ of Certiorari to review the judgment of the Court of Appeals for the First Supreme Judicial District at Houston, Texas.

STATEMENT OF THE CASE

The City of Houston (the "City"), the Houston Independent School District ("HISD") and William R. Brown, Jr., the Acting Tax Assessor and Collector for said taxing units, appealed from a judgment of the 295th District Court, Harris County, Texas, permanently enjoining said Respondents from attempting to collect the 1981 taxes assessed on bank shares issued by Morgan Guaranty International Bank. Plaintiff, Morgan Guaranty International Bank ("MGIB"), Petitioner herein, instituted this suit on December 22, 1981, against the City and School District contesting the validity of ad valorem taxes assessed on behalf of said taxing units on bank shares issued by Morgan Guaranty International Bank. In response to the Respondents' Plea in Abatement, Plaintiff's First Amended Original Petition was filed adding Morgan Guaranty Trust Company of New York ("MGT"), the owner of all issued and outstanding shares of Morgan Guaranty International Bank, as a Party Plaintiff.

In 1974, pursuant to Section 25(a) of the Federal Reserve Act, 12 U.S.C. §§ 611-631, commonly known as the Edge Act, Morgan Guaranty International Bank of Houston ("MGIBH") commenced operation in Houston, Texas. From its inception through the tax year 1980, MGIBH paid a bank shares tax to the Respondents on behalf of its sole stockholder, MGT.

In 1979, pursuant to Section 3(b) of the International Banking Act of 1978 (12 U.S.C. § 611), the Federal Reserve Board issued regulations permitting banking organizations established pursuant to Section 25(a) of the Federal Reserve Act, *supra,* to operate branch banks in the United States. On June 10, 1980, all of the assets and liabilities of MGIBH were transferred to MGIB, and

MGIBH's banking operations in Houston were converted to a branch operation of MGIB. In addition to the Houston branch office, MGIB operates branch offices in the port cities of Los Angeles and San Francisco, California. MGIB has designated Miami, Florida as its home office or corporate headquarters, and all of its capital stock is owned by Morgan Guaranty Trust Company of New York as was MGIBH.

The Petitioner Banks asserted in the lower Court that they were not liable for ad valorem taxes on their banking operation in Houston, Texas under 12 U.S.C. § 627, *supra,* or under Texas law. The Petitioner Banks did not contest the valuation method or the apportionment method used to assess the tax for the year 1981 on the bank shares issued by MGIB but merely asserted that the Respondent taxing units had no power or authority to levy such a tax or that no portion of MGIB's bank shares had any tax situs in Houston, Texas or within the Houston Independent School District.

On the 20th day of December, 1982, the trial court considered Petitioners' Motion for Summary Judgment and Respondents' Motion for Summary Judgment. On the 29th day of December, 1982, the 295th District Court, Harris County, Texas granted Petitioners' Motion for Summary Judgment and permanently enjoined the Respondents from attempting to collect the 1981 taxes assessed on bank shares issued by MGIB. On December 29, 1983, the Court of Appeals for the First Supreme Judicial District at Houston, Texas reversed the judgment of the trial court and rendered judgment for the Respondents. The Texas Supreme Court refused to grant a Writ of Error to review the case (no reversible error) and denied a Motion for Rehearing.

SUMMARY OF THE ARGUMENT

The Texas appellate court correctly construed the federal statute at issue herein. A review of the Congressional Record clearly shows that Congress intended to grant to the states the authority to tax the banking operations of an Edge Act Corporation operating banking facilities within their jurisdiction. There are repeated references therein to show that Congress intended that Edge Act Corporations were to be taxed in the states where they conducted their business. Furthermore, it is clear that Edge Act banks were not to be considered an agency of the United States but were simply private profit-making corporations operating under a federal charter.

At the time that the Act was passed, and for more than five decades following, interstate branch banking was prohibited. The home office was synonymous with the state in which the bank was doing business. Since the International Banking Act of 1978 did not grant tax immunity to branch banks, interstate banking operations became subject to the same rules established by this Honorable Court for state taxation of other corporations operating across state lines.

Texas law provides that once the taxing authority establishes its prima facie case of a tax delinquency, the burden is placed on the taxpayer to show that the actions of the taxing authority are discriminatory or cause substantial injury. There is no evidence in the record to show that the taxing authorities assessed any tax on MGIB other than on its banking operations within Texas. Petitioners did not show, and could not show, that any attempt was made by Respondents to tax Petitioners' banking operations in other states. Any taxpayer might allege that apportionment might subject it to the possibility of

double taxation, however, such an allegation has not prevented local taxation of other corporations conducting interstate operations.

A review on writ of certiorari will be granted only when there are special or important reasons therefor. Such reasons do not exist in this case. The Texas appellate courts have properly construed the federal and state law at issue herein; the Texas statutes authorizing a bank shares tax have been repealed for reasons not at issue in this case; and there has been only one other reported decision construing 12 U.S.C. § 627 in more than sixty years. The Writ of Certiorari requested in this case should be denied.

ARGUMENT AND AUTHORITIES

I. The Federal Statute

Petitioner MGIB is an Edge Act banking corporation chartered pursuant to Section 25(a) of the Federal Reserve Act, 12 U.S.C. §§ 611-631. Section 627 of 12 U.S.C. provides for state taxation of corporations organized pursuant to this Act and states as follows:

> § 627. State taxation
>
> Any corporation organized under the provisions of sections 611-631 of this title shall be subject to tax by the State within which its home office is located in the same manner and to the same extent as other corporations organized under the laws of that State which are transacting a similar character of business. The shares of stock in such corporation shall also be subject to tax as the personal property of the owners or holders thereof in the same manner and to the same extent as the shares of stock in similar State corporations. Dec. 23, 1913, c. 6, § 25(a), as added Dec. 24, 1919, c. 18, 41 Stat. 378.

Although six decades have elapsed since this provision was enacted by the United States Congress, it appears that only one court has had occasion to consider its practical application. In *Commonwealth v. First Pennsylvania Overseas Finance Corporation,* 425 Pa. 143, 229 A.2d 896 (1967), the Supreme Court of Pennsylvania considered the validity of applying Pennsylvania's capital stock tax to the shares of an Edge Act banking corporation doing business in Pennsylvania. Because the Edge Act banking corporation was a wholly-owned subsidiary of a Pennsylvania corporation and had its home office in Philadelphia, Pennsylvania where it was conducting all of its banking operations, the fact that the Court sustained the validity of the tax has little relevance to the issues before this Court. The Petitioners' construction of the phrase "subject to tax by the State within which its home office is located" would create a fictional tax situs in the State in which the corporation elects to place its corporate headquarters or wishes to designate as its home office in its application for a federal charter. This construction is not supported by the Congressional Record of the 66th Congress containing the floor debate concerning this Act. The Edge Act, so called in honor of Senator Edge from New Jersey as sponsor of the Act, underwent considerable debate on the floors of both the House and the Senate. The original bill contained no provisions regarding taxation. The reason for this is illustrated in the following remarks by Senator Cummins and Senator Edge:

> Mr. CUMMINS. There is no provision in this bill giving or reserving to the States the right to tax the property of the institution, as I read the bill. Does the Senator from New Jersey contemplate the

> immunity from taxation which arises from the relation of the corporation to the Government, namely as a fiscal agent of the Government?
>
> Mr. EDGE. Not at all. . . . [T]here is no intention on the part of the original compiler of the bill to have it escape taxation, . . . the mere fact that these were not recited as being exempt would mean they would be subject to taxation; but when the question was raised in conference with the Senator from North Dakota I at once accepted without hesitation an amendment which he is going to offer later which makes that clear. 58 Cong. Rec. 4955 (1919).

The aforesaid amendment was subsequently introduced; however, some of the senators had difficulty with the wording as shown by the following statements:

> Mr. NORRIS. I notice in the amendment offered the taxes are to be paid into the Treasury of the Uinted States. I understand they are to be taxed under State laws in the States where they may be doing business.
>
> Mr. GRONNA. Yes; local taxes.
>
> Mr. NORRIS. Is it the intention that these corporations shall pay like taxes to the States where they may be doing business?
>
> Mr. GRONNA. I think it would be wise to add that these banks shall pay taxes in accordance with the laws of the United States and of the States. 58 Cong. Rec. 4969 (1919).

As the Senate debate continued, Senator Edge made the following remark:

> Mr. EDGE. However, as the Senator from North Dakota and the Senator from Utah state, we want

> to make it doubly sure, and inasmuch as no one wants them to escape any taxation, State or Federal, I am entirely satisfied to have language inserted to make it clear; but I do not want to have it involved.

As the Senate continued to debate the issue, Senator Norris made the following remark:

> Mr. NORRIS. The Senator from Oklahoma makes the suggestion that these banks, located in New York and similar places, will be doing a foreign business and therefore ought not to be required to pay any State taxes. That is true; every man who does business, if he goes to New York or Boston or Baltimore, is subject to the taxes levied on the business at the place where he is located, but that is no reason why they should be relieved from taxes that other corporations doing business in those cities have to pay the States. They ought to be taxed like any other banks. There ought to be no exemption about it. If they are located in New York they get the protection of the laws of New York, and they ought to be required to pay a tax to the State of New York the same as any other corporation doing business in that State.
>
> Mr. SMITH of South Carolina. I suggest to the Senator there is likely to be confusion if he tries to define the time and place and where the corporation is to pay taxes, whereas if nothing is said about it, under the ordinary operation of the tax laws, the tax that they ought to pay will be imposed by laws already existing. 58 Cong. Rec. 4969 (1919).

The debate at this time was concluded with the remarks of Senator Norris and Senator Smith of South Carolina:

> Mr. NORRIS. If they were taxed like national banks, that ought to be satisfactory. National banks

> are taxed in the various States in which they do business, and ought to be. Nobody ever contended to the contrary, so far as I know.
>
> Mr. SMITH of South Carolina. It seems to me you are going to get these definitions to the point where you will not know what they mean. 58 Cong. Rec. 4969 (1919).

Throughout the discussion, the Congress referred to the situs for taxation as the place where the corporation was doing business, and there was no intent to create a fictional situs at the location of the corporate headquarters.

The House of Representatives had the same difficulty with the actual wording of the taxation provision of this Act. The House Committee replaced the Senate wording of this provision with an amendment that was identical to the current statute except for the following clause. This clause stated:

> *Provided, however,* That such shares owned by non-residents of any State shall be taxed only in the city or town where the corporation's home office is located, and not elsewhere. 58 Cong. Rec. 7854 (1919).

This limiting clause was ultimately defeated prior to the passage of the Act.

Representative Johnson of Texas introduced an amendment which would provide for the taxation of bank shares in the state in which the owner was domiciled, but this amendment was defeated.

It was clear to the members of the House of Representatives that interstate branch banking operations were not permitted within the United States by the Act. Since

interstate branch banking was not permitted, it was clear that the location of the corporation's home office was synonymous with the state in which the bank was doing business. In defending the committee statement, Representative Wingo made the following remarks.

> Mr. WINGO. I have always thought, and I thought so in the Committee, that this provision on page 15, that they should be taxed in the State or county in which the corporation's home office is located is not right; but here is what the Committee did in writing the taxing feature of this bill: The Supreme Court of the United States and the different courts have interpreted this language. It is copied verbatim from the National Banking Act. In other words, *we are going to make these corporations and their stock to be taxed exactly in the same manner as national banks and their stock are taxed.* It is well understood by lawyers and by the public who render their statements for the purposes of taxation. I have never yet found any answer, I may say, to the argument that the shares of stock should be taxed and assessed at the domicile of the person owning them, but Congress has thrashed that matter out several times and has insisted, and the law is now as we have brought it forward in this amendment. 58 Cong. Rec. 8108 (1919). (emphasis supplied)

The Respondents urge that the legislative intent is clear that Congress had no intent to place the situs of taxation of the shares of stock issued by Edge Act banking corporations in any location other than the state in which the corporation was actually doing business. The intent was clear that the states would have the power to tax these banks in the same manner as other national bank-

ing corporations and in the same manner and to the same extent as the shares of stock are taxed in similar state corporations. Respondents further maintain that it is clear Congress intended to and granted to the states, power to levy an ad valorem tax on Edge Act banking corporations doing business within their state boundaries.

Edge Act Banks are not, and never were, a mechanism, agency or extension of the United States Government. They are merely private, profit-seeking corporations created and organized for the benefit of their stockholders. Their connection with the government was made clear by Representative Phelan as shown by the following excerpt from the Congressional Record:

> Mr. FAIRFIELD. What liability will the government assume for the wise conduct of these institutions?
>
> Mr. PHELAN. The Government assumes absolutely no liability. These corporations are just as independent of the Government as the national banks are today. In fact, they are not quite so close, because with the national banks the Government does pay out of its Treasury money that the national banks contribute to a redemption fund to redeem notes. The Government is absolutely free of liability. 58 Cong. Rec. 8083 (1919).

The lack of connection with the Government combined with the express consent of Congress to subject these banks to state taxation dispels any conflict or argument based on the Supremacy Clause of the United States Constitution.

The International Banking Act of 1978, Pub. L. No. 95-369, 92 STAT. 607, 12 U.S.C. § 611a, contained no

provision to alter 12 U.S.C. § 627 as originally enacted by the 66th Congress in 1919. Had they wished to grant tax immunity to Edge Act banking corporations in those states where they were conducting branch banking operations, the 95th Congress could have done so, but they did not. Congress was fully aware of the fact that for more than half a century, Edge Act Banks, like banks chartered under the National Bank Act, were subject to state taxation in those states where they were conducting banking operations.

To contend that Edge Act banking corporations can select the tax situs of their shares, by selecting a state to be their home office, while conducting banking operations at locations in other states has as much merit as the contentions of the Plaintiff in Error in *Old Dominion Steamship Company v. Commonwealth of Virginia,* 198 U.S. 299 (1905). Old Dominion contended that their vessels, although engaged in interstate commerce, were taxable not in the state where they were doing business, but rather in the state where they were registered or enrolled in accordance with the federal registry. However, this Court held as follows:

> Our conclusion is that where vessels, though engaged in interstate commerce, are employed in such commerce wholly within the limits of a state, they are subject to taxation in that state, although they may have been registered or enrolled at a port outside its limits. 198 U.S. at 309.

Just as vessel owners are not permitted to create a tax situs by mere selection of a state of registry, Edge Act Banks are not allowed to select a tax situs for their interstate operations by the mere selection of a state in which to place their home office.

The Petitioners state at p. 14 of the Petition for Writ of Certiorari: "The tax at issue here is on *all* of the capital stock of MGIB; these shares represent the capital investment and value of the entire operations of MGIB." From this erroneous premise, the Petitioners assert that therefore the tax at issue bears no relation to the activities of the Houston branch of MGIB and concludes that such a tax would result in "inequitable multiple taxation." This premise and the Petitioners' conclusions are not supported by the record. The Petitioners could not and did not place any evidence in the record to show that the Respondent taxing authorities attempted to levy a tax on MGIB's branch operations in California, Florida or the Bahamas. A *prima facie* case was established for the validity of the assessed valuations made by the taxing authorities in the trial court. The method of apportionment or the resulting valuation was not contested or rebutted in the trial court, and neither issue can now be raised on appeal by implication.

II. The Federal Apportionment Law

To avoid the possibility of double taxation, this Honorable Court, in construing the Commerce Clause of the United States Constitution and the Due Process Clause of the Fourteenth Amendment of the United States Constitution as they were applied to the taxation of corporations conducting interstate business operations, has established guidelines for permissible state taxation of interstate commerce. This Court has considered banking operations to be commerce. *United States v. Philadelphia National Bank,* 374 U.S. 321, 337 (1963). In *United States v. South-Eastern Underwriters Ass'n.,* 322 U.S. 533, 551 (1944), Justice Black quoted Chief Justice Marshall

from *Gibbons v. Ogden*:[1] "Commerce is interstate, he said, when it 'concerns more states than one.' " It is clear, therefore, that interstate branch banking is interstate commerce.

An apportioned ad valorem tax on the capital stock of a corporation involved in interstate commerce was sustained by this Court prior to the turn of the century. In *Western Union Telegraph Company v. Taggart,* 163 U.S. 1 (1896), quoting from an earlier decision,[2] the Court stated:

> It never could have been intended by the congress of the United States, in conferring upon a corporation of one state the authority to enter the territory of any other state and erect its poles and lines therein to establish the proposition that such a company owed no obedience to the laws of the state into which it thus entered, and was under no obligation to pay its support.

The court went on to state:

> Those decisions clearly establish that a statute of a state requiring a telegraph company to pay a tax upon its property within the state, *valued at such a proportion of the whole value of its capital stock* as the length of its lines within the state bears to the length of all its lines everywhere, deducting a sum equal to the value of its real estate and machinery subject to local taxation within the state, is constitutional and valid . . . (emphasis supplied).

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1. 9 Wheat. 194 (1824).

2. *Western Union Telegraph Company v. Massachusetts,* 125 U.S. 530, 548 (1888).

The problem under the Commerce Clause is to determine what portion of an interstate organism may be appropriately attributed to each of the various states in which it functions. Under the Due Process Clause the only question is whether the tax in practical operation has relation to opportunities, benefits, or protection conferred or afforded by the taxing state. These requirements are satisfied if the tax is fairly apportioned to the commerce carried on within the state. *Ott v. Mississippi Valley Barge Line Co.*, 336 U.S. 169 (1949). The rule which permits taxation by two or more states on an apportionment basis precludes taxation of all of the property by the state of domicile. *Standard Oil Co. v. Peck*, 342 U.S. 382 (1952).

The Petitioners did not allege in the trial court that the taxes were discriminatory, nor did they challenge the reasonableness of the apportionment method used in arriving at the value of the assessment. Their only contention alleged that the bank shares were not properly taxable in the State of Texas or in Houston, Texas because under their construction of state and federal law, the shares would have no tax situs in Texas. *See Braniff Airways v. Nebraska State Board of Equalization and Assessment*, 347 U.S. 590, 598 (1954).

In *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977) this Court established a test for determining permissible state taxation of interstate business operations. In *Complete Auto Transit*, the taxes in question were sales taxes assessed on vehicles in interstate commerce. In *Dept. of Revenue v. Association of Washington Stevedoring Companies*, 435 U.S. 734 (1978), this Court applied the same test enunciated in *Complete Auto*

Transit, in sustaining a tax levied solely on the value of unloading and loading occurring within the State of Washington. In *Japan Lines Ltd. v. County of Los Angeles,* 441 U.S. 434, 445 (1979), this Court restated the *Complete Auto Transit* test in considering a tax levied on shipping containers:

> If the state tax "is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State," no impermissible burden on interstate commerce will be found.

There is no evidence in the record to show that the apportioned ad valorem tax assessed by the Respondents on the bank shares issued by MGIB is not in full compliance with the *Complete Auto Transit* test. The record in this case clearly shows that MGIB's local banking operation has substantial nexus with the City of Houston, Texas. There is no evidence in the record which would show that the subject tax is not fairly apportioned, that the tax discriminates against interstate commerce or that no services, benefits or protection are provided to said banking operation by the City of Houston or the Houston Independent School District.

III. The Texas Law

The Texas Supreme Court in the recent case of *Davis v. City of Austin,* 632 S.W.2d 331 (Tex. 1982) reaffirmed the principle that a taxing authority establishes its *prima facie* case as to every material fact necessary to establish the cause of action when it introduces a copy of the de-

linquent tax record, certified by the proper taxing authority to be true and correct with the amount stated thereon to be unpaid.

When evidence was introduced showing that taxes were due, delinquent and unpaid, a prima facie case for the validity of the assessed valuations and the collection of such taxes was made. *Alamo Barge Lines, Inc. v. City of Houston,* 453 S.W.2d 132 (Tex. 1970); *Coffee v. City of Alvin,* 641 S.W.2d 597 (Tex. Civ. App.—Houston [14th Dist.] 1932, writ ref'd n.r.e.); *City of Corpus Christi v. Davis,* 575 S.W.2d 46 (Tex. Civ. App.—Corpus Christi 1978, no writ).

In *Houston Crane Rentals, Inc. v. City of Houston,* 454 S.W.2d 216 (Tex. Civ. App.—Houston [1st Dist.] 1970, writ ref'd n.r.e.), the Court held that when the City of Houston made the certified copy of the tax statement a part of its Motion For Summary Judgment, it made out its *prima facie* case.

When the taxing authority introduces the tax rolls into evidence, together with evidence that the tax has not been paid, it makes out a *prima facie* case, which is to say that the authority need not prove the validity of its assessment, the lawfulness of its tax rate, or the taxpayer's ownership of the property. *Hays Consolidated Independent School District v. Valero Transmission Company,* 645 S.W.2d 542, 546 (Tex. Civ. App.—Austin 1982, writ ref'd n.r.e.).

In *Michelin Tire Corporation v. Wages,* 423 U.S. 276, 289 (1976) in sustaining an ad valorem tax on an importer's merchandise, this Court made the following statement:

> But as already noted, such taxation is the *quid pro quo* for benefits actually conferred by the taxing state. There is no reason why local taxpayers should subsidize the services used by the importers; ultimate consumers should pay for such services as police and fire protection accorded the goods just as much as they should pay transportation costs associated with these goods.

This doctrine of *quid pro quo* for benefits actually conferred by the taxing state referred to above has been used by the Texas Courts. In *Texas Land and Cattle Company v. City of Fort Worth,* 73 S.W.2d 860, 864 (Tex. Civ. App.—Forth Worth 1934, writ ref'd), the Court stated as follows:

> We are not only satisfied that this method of taxation is well founded in principle and upon authority, but we think it entirely just and equitable, that, if persons residing abroad bring their property and invest it in this state, for the purpose of deriving profit from its use in employment here, and thus avail themselves of the benefits and advantages of our laws for the protection of their property, their property should yield its due proportion towards the support of the government that protects it.

The basic principle upon which the taxation of personal property rests in Texas is the common law rule of *mobilia sequuntur personam*:

> So far as applied to taxation, it merely means that the situs of personal property for purposes of taxation is the domicile of the owner unless (1) there is a statute to the contrary, or (2) the property is tangible and has acquired an actual situs of its own in a state or place other than where the owner

> is domiciled, or (3) *in the case of intangible property, it has acquired a business situs in a state other than the one where the owner is domiciled. State v. Crown Central Petroleum Corporation,* 242 S.W.2d 457, 461 (Tex. Civ. App.—San Antonio 1951, writ ref'd). (emphasis supplied)

Texas constitutional and statutory provisions for taxing property owned by corporations make no distinction between that owned by domestic and that owned by foreign corporations. However, in interstate relationships, foreign corporations are domiciled in the state where incorporated, but the equivalent of a local domicile for purposes of doing business in Texas is at their principal place of business in the State when one has been established. *Greyhound Lines, Inc. v. Board of Equalization for the City of Fort Worth,* 419 S.W.2d 345 (Tex. 1967). In Texas, the tax assessor is authorized to adopt an apportionment formula as the basis for taxing property within its jurisdiction in the absence of enabling legislation. *Greyhound Lines, Inc. v. Board of Equalization for the City of Fort Worth, Id.*

The fiction that personal property follows the domicile of its owner should not be allowed to obscure the truth. There is no doubt that the Respondent taxing authorities have the most significant contact with MGIB's Houston banking operation. This contact justifies the fairness of the collection of a tax to help support these taxing units which provide benefits and protection. *See Nacogdoches Independent School District v. McKinney,* 504 S.W.2d 832, 838 (Tex. 1974).

It is clear that Texas law provides for an apportioned tax on Edge Act banking corporations at the place where

they are "located" or conducting their business operations in Texas. To allow an out-of-state corporation to invest capital within Texas to take advantage of the economic environment created by the local community, to take advantage of the benefits, protection and services offered by local government, and then to remove the profits to another state without paying any taxes to support the local community, is wholly unjust and in contravention of the law. The apportioned ad valorem taxes levied by the Respondents in this case are authorized under both state and federal law.

CONCLUSION

Public policy dictates that each profit-making business operating within a community be required to pay its fair share of taxes to support the local municipalities that provide the benefits, protection and services which create a profitable economic environment. To allow any business to enter a state and operate in a tax-immune status creates an additional burden on local taxpaying citizens which is flagrantly inequitable and fosters unfair competition. Neither the Congress nor the Legislature ever intended for such an inequity to exist. The ad valorem taxes which are the subject of this case are valid under both state and federal law. The Court of Appeals correctly reversed the judgment of the trial court and correctly rendered judgment for the taxing authorities. No error is presented, and no harm is shown. Petitioners' Application for Writ of Certiorari should be denied. As the Honorable Justice Jackson stated in *Herb v. Pitcairn*, 324 U.S. 117, 125 (1945), *rev'd on other grounds*, 325 U.S. 77 (1945): "Our only power over state judg-

ments is to correct them to the extent that they incorrectly adjudge federal rights."

Respectfully submitted,

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CERTIFICATE OF SERVICE

I have on this _____ day of January, 1985, forwarded a true and correct copy of the foregoing Brief Opposing the Petition for Writ of Certiorari to Mr. Larry F. York, Baker & Botts, 1410 United Bank Tower, 400 West Fifteenth Street, Austin, Texas 78701 by Certified Mail, Return Receipt Requested, No. P657772559.

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